

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 11-167—sSB 1043

Select Committee on Children

Judiciary Committee

Human Services Committee

**AN ACT CONCERNING ACCESS TO RECORDS OF THE
DEPARTMENT OF CHILDREN AND FAMILIES**

SUMMARY: By law, the Department of Children and Families (DCF) may not disclose its records to anyone unless (1) state law or federal regulations require or allow the disclosure or (2) the subject of the record or his or her authorized representative consents to the disclosure. This act generally expands the list of individuals and entities to whom DCF must, or may, disclose its otherwise confidential records, while broadening the circumstances in which the department can deny access. Also, in a number of instances, it limits or changes the use the recipient may make of materials contained in a record. By law, unauthorized disclosures are subject to imprisonment for up to one year, a fine of up to \$1,000, or both.

Under the act, a child is a person 15-years-old or younger; a youth is a 16- or 17-year-old.

The act also makes conforming, minor, and technical changes.

EFFECTIVE DATE: October 1, 2011

DISCLOSURE OF RECORDS

By law, many of the records DCF maintains are confidential and may not be disclosed. A "record" is information DCF created or obtained as a result of its child protection activities or other activities related to a child who is or was in its care or custody. Records include information in DCF's child abuse registry and information the department obtained from other sources while a child was receiving services from the department. The act eliminates a restriction on DCF's disclosing records that it did not create, other than those that the law mandates to be disclosed, thus increasing the volume of materials that either must or can be shared. On the other hand, the act limits the scope of allowable disclosures of DCF and other records to only those portions that pertain to the requestor or that person's minor child. This was not the case under prior law.

CONSENT TO RELEASE RECORDS

Under prior law, the only people who could consent to a record's release were: (1) the person named in the record who (a) is or was committed to DCF; (b) received services from DCF, or (c) is, or was, the subject of a child abuse or neglect investigation; (2) the requestor's authorized representative or attorney; (3) the authorized representative of a deceased person, including an attorney, who

was committed to DCF; or (4) the parent of someone currently or previously committed to DCF, if that person is still a minor.

The act eliminates the ability of people whose parental rights have been terminated to consent to a record's disclosure or have access to it. It adds a child's guardian ad litem (GAL - a person representing a child's best interests) and attorney to the list of authorized representatives, thus giving them express authority to consent to a record's disclosure. (In practice, an attorney already may authorize release of records on his or her client's behalf.)

MANDATORY DISCLOSURES

By law, DCF must disclose records to certain parties regardless of whether it has the consent of the person who is the subject of the record or his or her authorized representative. The act changes, in certain cases, the scope of information subject to mandatory disclosure and how this information must be used.

Mandatory Disclosures With Modified Scope

The act modifies how certain parties can use the information in the disclosed record. These include, among others, (1) individuals named in a record, (2) DCF employees, and (3) certain state agencies.

Individuals Named in a Record. Under prior law, any person named in DCF records, or an authorized representative, was entitled to see or copy any record DCF made or kept on file that pertained to or contained information or materials concerning him or her. But the person could not obtain information that would identify the person who reported the alleged child abuse, except in limited situations (see below).

The act limits such mandatory disclosures to those portions of the record that pertain to the individual making the request, rather than access to the entire record. The same is true for parents of a minor child whose rights have not been terminated.

DCF Employees. The act broadens required disclosure to DCF employees by requiring disclosure to any employee for any job-related purpose.

Attorneys General. Under prior law, DCF had to give state attorneys general and assistant attorneys general access to DCF records to provide legal counsel to the department. The act narrows this purpose to representing DCF in a legal proceeding involving the department or a department employee.

Law Enforcement Officers. Prior law required DCF to disclose its records to law enforcement agencies and placed no limits on how these agencies used the information in these records. The act instead requires disclosure to state and federal law enforcement officers; it does not mandate disclosure to municipal officers. The act also limits these disclosures to investigations of allegations of child abuse or neglect.

Prosecutors. Prior law also gave the chief state's attorney or a designee access to DCF records for the limited purpose of investigating or prosecuting abuse or neglect cases. Under the act, the state's attorney no longer has automatic

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access for this purpose. When a record he or she seeks concerns a juvenile who is a defendant in an unrelated matter not involving child abuse, the prosecuting official is only entitled to access (1) after obtaining a release (the act does not specify from whom) and (2) for as long as the abuse or neglect case is being prosecuted.

Department of Developmental Services (DDS). Under prior law, DCF was required to provide DDS with a written summary of any abuse or neglect investigation it conducted of a child involved with DDS for purposes of eligibility determinations or developing a service plan. The act removes this limitation, thus permitting DCF to give DDS access to the child's complete file.

Department of Public Health (DPH). Prior law gave DPH access to DCF records for use in connection with licensure of any individual to care for children or to determine their suitability for licensure. The act specifies that the licensure involved is limited to day care facilities DPH licenses. But it adds access for investigations conducted jointly by DPH and the Department of Social Services (DSS).

Chief Child Protection Attorney. Among other things, the chief child protection attorney (CCPA) contracts with other attorneys for legal and GAL services involving child abuse and neglect. Under prior law, she had access to DCF records to monitor billing. Under the act, she is entitled to full disclosure of all department records and can use them for any purpose. (PA 11-61 and PA 11-51 eliminate the CCPA position and transfer her functions to the chief public defender).

Mandatory Disclosures That Were Previously Prohibited

In some cases, the act requires that DCF disclose records to people and entities to whom access was prohibited in the past. These are: foster and potential adoptive parents, the Department of Mental Health and Addiction Services (DMHAS), and the Human Services Committee.

Foster and Adoptive Parents. Foster and potential adoptive parents were neither entitled nor permitted access to information about a foster or adoptive child under prior law. The act gives them access to records relating to social, medical, psychological, or educational needs of a child currently placed with them or being considered for placement. But information provided cannot identify a biological parent without that parent's consent.

DMHAS. The act gives DMHAS access to records for making treatment plans for young adults with behavioral health needs who have transitioned from DCF to DMHAS.

Probate Court Judges and Employees. The act requires DCF to release records that a probate judge or employee needs to perform official functions.

Superior Court Judges. Aside from their inherent authority to order that the department release records, Superior Court judges are entitled to access under the act in types of cases where disclosure was not statutorily authorized under prior law. These are:

1. criminal prosecutions, for an in camera (private) inspection when (a) the court has ordered that the record be provided to it or (b) a party to the

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- proceeding has subpoenaed the record;
2. in family violence proceedings, when the records concern family violence with respect to the child who is the subject of the proceeding or the child's parent (under the act, copies of the record also go to all necessary parties); and
 3. when a person charged with child abuse seeks the name of the reporter, and the court must examine the record to determine whether there is reasonable cause to believe that (a) the reporter knowingly filed a false report or (b) the interest of justice requires it, either of which are reasons for the court to order disclosure. This includes taped child abuse hotline calls and oral reports.

Department of Motor Vehicles (DMV). The act requires disclosure to DMV of information obtained in child abuse investigations, in addition to the already required disclosure of information from the child abuse registry. DMV may use this information for criminal background checks for people applying for license endorsements involving school buses, student transportation, and student activity vehicles.

Human Services Committee. The act adds the Human Services Committee to the legislative committees that must receive records in the course of their official functions. The Judiciary, Program Review, and Children's committees (and governor) can already obtain them in this situation. Under existing law, the committees cannot disclose individually identifying information unless necessary.

Mandatory Disclosure of Records That Were Previously Permissive

Auditors of Public Accounts. The act requires, rather than allows, disclosure of records to the auditors of public accounts. By law, information identifying the record's subject can only be disclosed if this is essential to the audit.

PERMITTED DISCLOSURES

Permitting Disclosures Previously Prohibited

The act gives the DCF commissioner the discretion to release information to some entities and people to whom access was not previously permitted. These are (1) foster care and adoption contractors; (2) people searching for relatives; (3) abuse and neglect reporters; (4) anyone interviewed in the course of an abuse or neglect investigation; (5) a court of competent jurisdiction when a DCF employee is subpoenaed to testify about the record; and (6) a Superior Court judge for the purpose of deciding on the disposition of an abuse, neglect, or status offense case.

Adoption Agencies. The act permits adoption agencies under contract with DCF to obtain records, so long as no information identifying the child or youth's biological parent is disclosed without that parent's consent.

Missing Relatives. Under the act, DCF can disclose records to relatives looking for a missing parent or youth. Disclosure is limited to information that assists in finding them.

DCF Contract Employees. The act permits DCF to disclose records, without limitation, to individuals it contracts with to perform functions and activities on

its behalf, including data analysis, processing, or the administration of utilization reviews; quality assurance; practice management; consultation; data aggregation; and accreditation services. Such access was not permitted under prior law.

Permitted Disclosures Previously Required

The act allows, rather than requires, DCF to disclose records to:

1. law enforcement agencies and prosecutors in cases where criminal activity is suspected and
2. any individual when alleged abuse or neglect results in a child fatality or near-fatality.

Law Enforcement Officers and Prosecutors. The act makes permissive, rather than mandatory, disclosure of record information when law enforcement officers and prosecutors have reasonable cause to believe that a child or youth is, or is at risk of, being abused or neglected as a result of any suspected criminal activity by any person. It appears that this provision includes federal, state, and municipal law enforcement personnel. The only prosecuting officials covered by this provision are the state's attorney for the judicial district in which the child resides or the alleged abuse occurred, or his or her designee.

This disclosure provision appears largely to overlap another provision in the act that requires DCF to disclose information to federal and state police officers for the purpose of investigating an allegation of child abuse (see above).

Child Fatalities. The act makes discretionary, rather than mandatory, DCF's disclosure of information about abuse or neglect cases involving child fatalities or near-fatalities. It eliminates the requirement that a physician certify the child's condition but extends its reach to 16- and 17-year-olds. It continues to limit such disclosures to general information that does not jeopardize a pending investigation.

Employee Grievances. The act makes record disclosures for employee grievances permissive rather than mandatory but, as under existing law, leaves it to the commissioner to determine which documents are relevant. But access is expanded to cover (1) former, rather than just current employees; and (2) materials needed for court and administrative proceedings. Prior law did not authorize disclosure for administrative or court proceedings.

Records Already Subject to Permissive Disclosure

Some provisions modify the approved uses for permissively disclosed records. Those subject to these disclosures are:

1. child abuse or neglect matters that are likely to become known to the public;
2. out-of-state abuse and neglect agencies;
3. physicians determining whether to put a child in an emergency placement;
- (4) child treatment and diagnostic service providers;
4. mental health service providers treating perpetrators or people who will not or cannot protect their children; and
5. bona fide researchers.
6. *Publicly Disclosed Information.* Under prior law, the DCF commissioner

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could disclose information to any individual about an incident of abuse or neglect that the public was likely to find out about. Disclosure was limited to (1) whether the department received an abuse or neglect report and (2) in general terms, any action DCF took, provided the names or identifying information about the minor victim or family members was not disclosed, nor was the name of the suspect unless he or she had been arrested for the crime.

Under the act, she can disclose such information and keep identifying information confidential, even if that information has been disclosed by other sources. She can also (1) confirm or deny the accuracy of the public report and (2) describe, in general terms, the legal status of the case. She cannot disclose information that could jeopardize a pending investigation.

Out-of-State Agencies. Prior law permitted disclosure to any agency in another state that was responsible for investigating or protecting children from abuse and neglect, solely for the purpose of their investigation. The act specifies that the covered entities are out-of-state courts, agencies, and federally recognized tribes that are responsible for investigating abuse or neglect, preventing it, or providing services to at-risk families.

Physicians Authorized to Take Abused and Neglected Children into Custody. By law, DCF can disclose records to physicians who need the information to determine whether to place a victim of suspected abuse or neglect who is under age 16 in an emergency DCF placement. The act appears to extend this provision to cases involving 16- and 17-year-olds.

Child Treatment and Diagnostic Service Providers. By law, DCF can provide records to professionals to whom the department had referred an abuse victim for diagnosis; care or treatment; supervision; or education. The record's content is limited to that related to the individual's or agency's responsibilities.

The act expands this provision to permit DCF to disclose records to any provider of professional services to a child, youth, or family who DCF has referred to the provider.

Perpetrator's Treatment Provider. The act limits the records medical or mental health agencies or individual providers can obtain in the course of treating an abuser or person not willing or able to protect a child from abuse and neglect. Under the act, they cannot get records unless a DCF investigation indicates that the person seeking treatment was responsible for abuse or neglect. And disclosure is limited to records necessary for the objectives of the diagnosis and treatment.

Bona Fide Researchers. Prior law permitted DCF to disclose information to researchers for approved projects, but the researchers were not given access to information identifying subjects unless (1) it was essential for the research and (2) each person named in a record or his or her authorized representative consented in writing to the disclosure. The act eliminates the need to get consent.

Confidentiality of Identity of Abuse or Neglect Reporter and Cooperating Witness. The act changes restrictions on DCF's disclosure of the name of a person who reports abuse or neglect by applying to these individuals the confidentiality protections that existing law applies to people who cooperate with abuse and neglect investigations.

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Under prior law, DCF could not disclose the name of an abuse reporter without the person's written consent, except to:

1. a DCF employee responsible for child protective services or the abuse registry;
2. a law enforcement officer, an appropriate state's attorney, or assistant attorney general;
3. a Superior Court judge and all necessary parties in abuse and neglect proceedings; a criminal prosecution involving abuse or neglect; when a court determined that the reporter had knowingly filed a false report; or when disclosure was required in the interests of justice; or
4. a state child care licensing agency, executive director of any institution, school or facility, or superintendent of schools.

The act permits (1) an abuse reporter to request confidentiality or (2) DCF to determine that disclosing the reporter's name might be detrimental to her or his safety or interests. But DCF must disclose the name (and the names of people who cooperated with an investigation) to:

1. a DCF employee, for reasons reasonably related to DCF business;
2. a law enforcement officer or a state's attorney, for purposes of investigating or prosecuting a report; or
3. an assistant attorney general representing DCF.

FURTHER DISCLOSURE OF RECORD

Prior law prohibited information disclosed from a person's record from being further disclosed without consent unless it was disclosed in response to a court order in a pending case involving criminal prosecution or an abuse, neglect, commitment, or termination of parental right proceedings. The act also permits further disclosure (1) based on an order issued by any court of competent jurisdiction or (2) for DPH day care licensing and DSS child care payment decisions.

DENYING ACCESS TO RECORDS

Under existing law, the DCF commissioner can refuse to disclose a record to anyone, including the person who is its subject or his or her attorney. Under prior law, the sole basis for the commissioner to do this was her determination that disclosure was not in the best interest of the person or his or her authorized representative. She had to inform the requestor of her decision, its basis, and how to challenge it in court. The act eliminates the consideration of the requestor's best interests as an express reason, thus apparently eliminating any restriction on the commissioner's reasons for denying disclosure. When she refuses a request, the act requires her to notify the requestor that she is withholding records and their general contents, in addition to providing her reasons and notice of judicial review options.

AGGRIEVEMENT

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The act authorizes people who disagree with some of the DCF commissioner's decisions or actions to file a Superior Court appeal. Under prior law, aggrievement could be established based on allegedly improper disclosures or non-disclosures of:

1. information in the abuse and neglect registry;
2. information concerning a child abuse reporter or cooperating witness;
3. records that the commissioner was permitted, but not required, to release and those whose release was mandatory;
4. information needed for bookkeeping purposes; or
5. records bearing a stamp stating that further disclosure was not allowed.

The act eliminates as sources of aggrievement the improper disclosures or non-disclosures of (1) records for which disclosure is mandated, (2) records involving fee calculations or disputes, and (3) department determinations that disclosure is not in the requestor's best interest.

It adds as a source of aggrievement the scope of the commissioner's disclosure of information involving child fatalities and near-fatalities.

Court Appeals

The act expands the reasons on which courts may rely to uphold DCF's non-disclosure decisions. Previously, after a hearing and private review of the records, the court had to order disclosure unless it determined that this could be contrary to the requestor or requestor's representative's best interests. Under the act, the court may also uphold DCF's decisions when it determines that disclosure (1) would be contrary to the best interests of the person who is the subject of the record, (2) could reasonably result in the risk of harm to any person, or (3) would contravene the state's public policy.

CORRECTION OF RECORD ERRORS

The act limits the right of a person named in a record to submit a statement for inclusion in the record concerning what he or she believes is inaccurate information. Under prior law, this entitlement was unqualified. The act removes the reference to "unqualified."

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